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clubs¹² no such rights are found; and the English courts, consistently with their theory, refuse relief in such cases.¹³ In members' clubs, however, trustees hold property for the club; therefore there is in every member the equitable property right of a *cestui que trust*.¹⁴ Though this right is not a severable one,¹⁵ and is contingent and defeasible on the member's voluntary or involuntary retirement from the club,¹⁶ it is nevertheless a true property right; and the courts properly relieve against a threatened or consummated expulsion which would illegally deprive the plaintiff of it.¹⁷ Since, however, the association has the power to terminate the right for cause, and is by the articles of association made the judge of cause, the courts, adopting the general attitude toward the decisions of quasi-judicial tribunals,¹⁸ should accept the committee's *bonâ fide* rulings on all questions of construction of the rules or of cause for dismissal. A recent English case, enjoining expulsion because the court thought that the club rules had not been correctly interpreted and applied, therefore seems erroneous. *D'Arcy v. Adamson*, 57 Sol. J. 391. Courts should interfere only where the expelling body is not the properly constituted one, and where the action is palpably contrary to the letter and the spirit of the articles. This, indeed, is substantially the meaning of the three exceptions mentioned in the beginning of this article. They are, however, vague and artificial; and courts would reach better results by dispensing with them and dealing with each case on general principles.

A PATENTEE'S RIGHT TO LIMIT THE RESALE PRICE OF A PATENTED ARTICLE. — One who manufactures and sells articles of commerce cannot, apart from statute, restrict the resale or the use of such articles by mere notice to the purchaser or sub-purchaser. The common law has always been opposed to such restraints on chattels.¹ Furthermore, contracts limiting the use or sale do not run with chattels even though the purchaser has notice thereof.² The Copyright Act, which secures to the author, inventor, designer, or proprietor of books, etc., "the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the same"³ has been construed to give no additional

¹² Clubs in which one man owns the club house and property, manages the finances, and charges each member regular dues for the use of the premises, see WERTHEIMER'S LAW RELATING TO CLUBS, 4 ed., 1.

¹³ *Baird v. Wells*, 44 Ch. D. 661; *Lyttleton v. Blackburn*, 45 L. J. Ch. 223.

¹⁴ There is one suggestion that a property right exists even though the club owns no property, the idea being that membership alone is a property right. See STEVICK, UNINCORPORATED SOCIETIES, § 42. The theory is ingenious and perhaps sound, but the law has not yet developed this far. See NIBLACK, BENEFIT SOCIETIES AND ACCIDENT INSURANCE, § 75.

¹⁵ See *McMahon v. Raubor*, 47 N. Y. 67, 70.

¹⁶ See *Lawson v. Hewel*, 118 Cal. 613, 621, 50 Pac. 763, 765.

¹⁷ *Innes v. Wylie*, 1 C. & K. 257; *Fisher v. Keane*, 11 Ch. D. 353; *Labouchere v. Earl of Wharnccliffe*, *supra*.

¹⁸ See POLLOCK, TORTS, 9 ed., 124.

¹ COKE, LITTLETON, § 360; BENJAMIN, SALES, 6 ed., 746.

² *Garst v. Hall & Lyon Co.*, 179 Mass. 588, 61 N. E. 219. See *Park & Sons v. Hartman*, 153 Fed. 24, 39. But see 17 HARV. L. REV. 415.

³ Revised Statutes, § 4952.

right to limit by notice the price at which the subject of the copyright is resold.⁴

In view of the fact that a patentee is given by statute greater power than the owner of a copyright, it has been the opinion of a majority of the lower courts that disregarding a notice on a patented article limiting the resale price would be an infringement of the patent.⁵ By the patent statute every patentee is granted the exclusive right to make, use, and vend the patented article.⁶ But a recent decision in the Supreme Court of the United States construes this statute as giving the patentee no right to limit the resale price by notice. *Bauer & Cie v. O'Donnell*, 33 Sup. Ct. Rep. 616. Four justices dissented. The majority argue that "the exclusive right to vend" in the patent statute should be interpreted in the same way as "the sole liberty of vending" in the Copyright Act. Since broader rights are given to the patentee, it is hard to see why the construction of the one should control the construction of the other. Furthermore, it may well be doubted whether this decision is consistent with the spirit of a ruling of the same court in the case of *Henry v. A. B. Dick Co.*⁷ In that case it was held that although the patentee had passed title to an article, he could still require by notice that it be used only with certain designated supplies. True, the exclusive right to use, and the exclusive right to vend are separate rights;⁸ but in view of the ruling as to the extent of the patentee's power over the use of an article and the similar treatment of these rights in the common law, it would seem that Congress also intended to give to the patentee the right to control the vending of the article even after he had once sold it.

In view of this decision, however, it is an important problem confronting business men whether a patentee can in any way legally restrict the price which the ultimate consumer will pay.⁹ It is entirely proper for the manufacturer to retain title, and by making agency contracts with retailers control the retail price;¹⁰ but such a system is often impracticable.¹¹ If the manufacturer wishes to pass title, a single contract with the purchaser not to sell below a certain price is legal¹² in the case of ordinary articles of commerce. And this would seem equally true of patented articles. In the case of goods made under a secret process, systems of contracts with all purchasers and sub-purchasers to control the retail price have been held illegal at common law and under the

⁴ *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339, 28 Sup. Ct. 722.

⁵ *New Jersey Patent Co. v. Schaefer*, 178 Fed. 276; *The Fair v. Dover Mfg. Co.*, 166 Fed. 117; *Automatic Pencil Sharpener Co. v. Goldsmith Bros.*, 190 Fed. 205. The law in England is in accord with this view. *National Phonograph Co. of Australia v. Menck*, [1911] A. C. 336.

⁶ Revised Statutes, § 4884.

⁷ 224 U. S. 1, 32 Sup. Ct. Rep. 364. For a discussion of this case, see 25 HARV. L. REV. 641.

⁸ See *Adams v. Burke*, 17 Wall. (U. S.), 453, 456.

⁹ For a discussion of the policy of allowing such control, see 26 HARV. L. REV. 128.

¹⁰ *Bement v. National Harrow Co.*, 186 U. S. 70, 22 Sup. Ct. 747.

¹¹ A more simple though less effective method would be for the patentee to cease selling to a retailer who cut the price or who continued to sell to those who cut prices. This would probably also be legal.

¹² *Garst v. Harris*, 177 Mass. 72; *John D. Park & Sons Co. v. National Wholesale Druggists Association*, 175 N. Y. 1, 67 N. E. 136.

Sherman Act, as an unreasonable restraint of trade.¹³ While recognizing that a legal monopoly exists while the goods are in the hands of the maker, it is argued that it is against public policy to allow the monopoly to continue beyond the first sale. It is said that at the time of this sale the goods pass outside the monopoly, and that a system of contracts limiting the revending illegally restrains trade.¹⁴ In view of the fact that a manufacturer might refuse to sell any goods at all, it is difficult to see how a control over the later sales can be more objectionable, as a restraint of trade, than the original monopoly. It would seem, then, unreasonable to arbitrarily limit the monopoly to the first sale. However, under this decision probably a similar system of contracts as to patented articles would be held illegal. The tendency of the courts, therefore, is to make effective control of the resale price of patented articles practically impossible.

EXTENSION OF THE FEDERAL POWER OVER INTERSTATE COMMERCE UNDER THE PURE FOOD AND DRUGS ACT. — The effect of the decision in the case of *McDermott v. State of Wisconsin*, 228 U. S. 115 on the extension of federal power under the Pure Food and Drugs Act is of more than passing importance. The act¹ provides that misbranded articles shall be contraband and subject "to be proceeded against and seized" while still "unloaded, unsold, or in their original and unbroken packages"; and by a decision of the Secretaries of the Treasury, Agriculture, and Commerce and Labor, as empowered under the act,² a certain type of label was declared to be lawful for syrup mixtures.³ Now a Wisconsin statute was passed declaring punishable the use of any label other than a certain described one. The defendant had on his shelves, unpacked from their original packages and ready for sale, cans of syrup mixtures with federal labels attached. These labels did not comply with the state statute, and the defendant, being prosecuted thereunder, raised the question of constitutionality of the state statute. The Supreme Court of the United States held that the use of any label in interstate commerce other than that ratified in the decision of the Secretaries, was unlawful, and that therefore the Wisconsin statute was unconstitutional, even in its application to goods not in their original packages. The court based its decision on the ground of the necessity for keeping the federal label on the packages even after the goods are taken from their original pack-

¹³ *Dr. Miles Medical Co. v. Park & Sons*, 220 U. S. 373, 31 Sup. Ct. 376. See 24 HARV. L. REV. 244, 680. The English view is opposed to this. See *Elliman v. Carrington*, [1901] 2 Ch. D. 275. An effort has been made to distinguish this case as not involving a system of contracts.

¹⁴ Where the contracts are made by the manufacturer of ordinary chattels of commerce, it may be doubted whether the same result would be reached. Where other makers freely compete in the same kind of goods, it can hardly be said that there is a monopoly at any time except in so far as every manufacturer has a monopoly of the goods he makes. See *Park v. Hartman*, 153 Fed. 24, 42, 17 HARV. L. REV. 415.

¹ 34 Stat. at L. 768.

² *Supra*, 768.

³ See 228 U. S. 127.